IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc.No.72869 -M of 2006

DATE OF DECISION: NOVEMBER 28, 2006

Karnail Singh

...PETITIONER

VERSUS

State of Punjab

...RESPONDENT

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Mr. Ruchin Midha, Advocate,
for the petitioner.
Mr.N.S.Gill, AAG, Punjab.

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Petitioner Karnail Singh apprehending his arrest in a non-bailable offence in case FIR No.205 dated 22.10.1999 registered under Section 18 of the NDPS Act at Police Station Sadar, Muktsar, has filed this petition under Section 438 Cr.P.C. for grant of anticipatory bail.

I have heard the counsel for the petitioner and gone through the contents of the petition as well as the impugned order.

In this case, the aforesaid FIR was registered by the police when the petitioner was apprehended on the spot and after disclosing his identity and providing him opportunity for search by the Gazetted Officer, one kilogram opium was recovered from his possession. Recovery memo was duly prepared and signed by the witnesses.

When the accused was in judicial custody and investigation was going on, an application was moved on his behalf by some of his relative to the Senior Superintendent of Police requesting him for conducting an independent enquiry as the petitioner was falsely implicated in that case. It is the case of the petitioner that during the said enquiry, the Superintendent of Police (H) found that no doubt the alleged opium was recovered from the petitioner, but the petitioner found the said opium dropped in his way when he was walking through the fields. When the petitioner had just picked up the bundle to return the same to the cyclist, in the meanwhile a police party came and he was apprehended and recovery was effected. On the basis of

the said enquiry report, the police filed an application for discharge of the petitioner. The trial Court on 20.1.2000 discharged the accused by passing the following order:-

> "A prayer for release of the accused has been made on the ground that during the investigation of the case by SP (H), the applicant/accused has been found to be innocent.
> In view of the request, the accused is ordered to be discharged from the judicial custody. He be released immediately."

Subsequently, during further investigation, the police was not able to trace the real culprits, therefore, it was decided to file the untraced report. When the said untraced report was placed by the SHO for approval before the Senior Superintendent of Police, Muktsar, he did not approve the investigation being conducted by the SHO as well as the earlier enquiry report given by SP(H) to the effect that the petitioner was innocent, and after obtaining the legal opinion, it was decided to submit a challan against the petitioner as he was apprehended on the spot, one kilogram opium was recovered from his possession and recovery memo was duly prepared and signed by the witnesses.

After filing the challan, the petitioner has been summoned by the trial Court. At this stage, apprehending his arrest, the petitioner applied for anticipatory bail before the Additional Sessions Judge, Muktsar, which has been declined. Hence this petition.

Counsel for the petitioner contends that keeping in view the fact that the alleged recovery was of non-commercial quantity and the petitioner remained in custody for three months and was discharged by the trial Court in January, 2000, and now after six years, he should be granted the concession of anticipatory bail.

On the other hand, counsel for the respondent-State submitted that the petitioner was apprehended on the spot and from his possession one kilogram opium was recovered, and the ground on which the petitioner was found innocent by the SP(H) could be a defence and the same was not accepted by the Senior Superintendent of Police and accordingly challan was filed against the petitioner. Therefore, the petitioner is not entitled for the grant of anticipatory bail.

The factum of arrest of the petitioner on the spot and recovery of one kilogram opium from his possession by the police party, has not been disputed. Even in the enquiry conducted by the SP(H), this fact was not

disputed. Only it was stated that the said contraband was picked up by the petitioner from the fields, which was dropped by a cyclist and when he was going to return the same to the said cyclist, he was caught by the police and recovery was effected. The said report of the SP(H) was not approved by the Senior Superintendent of Police and it was decided to file a challan against the petitioner.

Thus, keeping in view the aforesaid facts and circumstances of the case, I do not find any ground to grant anticipatory bail to the petitioner.

Dismissed.

However, in case the petitioner after surrender files an application for regular bail before the trial Court, the same shall be considered and decided within three days while taking into consideration the fact that the alleged recovery was of non-commercial quantity and the petitioner earlier remained in custody for three months.

November 28, 2006 (SATISH KUMAR MITTAL)
vkg JUDGE